

## CHAPTER 18

### CONTESTED TRANSFER DETERMINATIONS

#### Authority

N.J.S.A. 34:13A-11 and 34:13A-27.

#### Source and Effective Date

R.2005 d.140, effective April 8, 2005.

See: 37 N.J.R. 41(a), 37 N.J.R. 1539(a).

#### Executive Order No. 66(1978) Expiration Date

Chapter 18, Contested Transfer Determinations, expires April 8, 2010.

#### Chapter Historical Note

Pursuant to Executive Order No. 66(1978), Chapter 18, Contested Transfer Determinations, expired on May 21, 1995.

Chapter 18, Contested Transfer Determinations, was adopted as new rules by R.1995 d.316, effective June 19, 1995. See: 27 N.J.R. 847(a), 27 N.J.R. 2454(a).

Pursuant to Executive Order No. 66(1978), Chapter 18, Contested Transfer Determinations, were readopted as R.2000 d.221, effective April 28, 2000. See: 31 N.J.R. 3939(a), 32 N.J.R. 2110(c).

Chapter 18, Contested Transfer Determinations, was readopted as R.2005 d.140, effective April 8, 2005. See: Source and Effective Date. See, also, section annotations.

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### SUBCHAPTER 1. NATURE OF PROCEEDINGS

#### 19:18-1.1 Nature of proceedings

N.J.S.A. 34:13A-22 et seq. (P.L. 1989, c.269, effective January 4, 1990) provides that no employer, as defined in N.J.S.A. 34:13A-22, shall transfer an employee between worksites for disciplinary reasons. It further provides that the Commission shall determine whether the basis for a transfer between worksites is predominately disciplinary. The procedures in this chapter are intended to avoid protracted administrative litigation. Contested transfer proceedings will normally lend themselves to expeditious disposition on the basis of the parties' submissions, which these procedures are intended to accommodate.

### SUBCHAPTER 2. INITIATION OF PROCEEDINGS

#### 19:18-2.1 Who may file

Any employee, as defined in N.J.S.A. 34:13A-22, or the employee's majority representative may initiate a contested transfer proceeding by filing with the Commission, an original and nine copies of a petition for contested transfer determination together with proof of service of a copy of the petition on the employer. A copy of each petition filed shall be retained in a public docket until the case is closed.

#### 19:18-2.2 Contents of petition for contested transfer determination

(a) A petition<sup>1</sup> shall be in writing and the party or representative filing the petition shall make this dated and signed certification: "I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief."

(b) Such petition shall contain the following:

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Petition forms will be supplied upon request. Address such requests to: Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, New Jersey 08625-0429. Forms may also be downloaded from the Commission's website: [www.state.nj.us/perc](http://www.state.nj.us/perc)

1. The full name, address and telephone number of the petitioner;

2. The full name, address and telephone number of the affected employee if the petitioner is an employee organization;

3. The full name, address and telephone number of the employer who has notified the employee of a transfer;

4. The date the employee was notified of the transfer;

5. The name and address of:

i. The employee's work site before the transfer; and

ii. The employee's work site after the transfer.

6. A statement of the specific factual allegations supporting the contention that the basis for the transfer between worksites is predominately disciplinary;

7. All documents and affidavits supporting the petition's factual allegations; and

8. A list of any other actions before the Commission or any other administrative agency, arbitrator or court, which the petitioner knows about and which involve the same or similar issues.

Amended by R.1995 d.316, effective June 19, 1995.

See: 27 N.J.R. 847(a), 27 N.J.R. 2454(a).

Amended by R.2005 d.140, effective May 2, 2005.

See: 37 N.J.R. 41(a), 37 N.J.R. 1539(a).

In (b), added a new 5 and recodified former 5 through 7 as 6 through 8; in the footnote, added the second sentence.

### **19:18-2.3 Timeliness of petitions**

The petitioner shall file a petition no later than the 90th day from the date of receipt of a notice of transfer.

New Rule, R.1995 d.316, effective June 19, 1995.

See: 27 N.J.R. 847(a), 27 N.J.R. 2454(a).

## **SUBCHAPTER 3. PROCEDURE**

### **19:18-3.1 Intervention**

A motion for leave to intervene in proceedings under this chapter shall be filed in writing with the Commission, stating the grounds upon which an interest in the proceeding is claimed and stating the extent to which intervention is sought. An original and nine copies of such motion shall be filed, together with proof of service of a

copy of such motion upon the parties. The Chairman or such other Commission designee, in his or her discretion, may permit intervention to such extent and upon such terms as may be deemed just.

### **19:18-3.2 Informal conference**

A Commission staff agent may hold a conference to clarify the issues in dispute, explore the possibility of settlement, or take stipulations of fact.

### **19:18-3.3 Amendment; withdrawal; dismissal; consolidation**

(a) The Chairman or such other Commission designee may permit the petitioner to amend the petition at any time upon such terms as may be deemed just. Filing, service, and proof of service of such amended petition shall conform to the provisions of these rules relating to the original petition for contested transfer determination.

(b) A petition for contested transfer determination shall be dismissed and the case closed if the petitioner files a notice of withdrawal at any time before service of the respondent's answer. After service of the answer, a petition may be withdrawn only with the consent of the Chairman or such other Commission designee. Unless otherwise stated in the notice of withdrawal, the dismissal is without prejudice.

(c) The Chairman or such other Commission designee, in his or her discretion, may dismiss the petition on the grounds of lack of jurisdiction, insufficient cause for determination, failure to prosecute or other good reason.

(d) The Chairman or such other Commission designee, in his or her discretion, may consolidate any separate proceedings, or sever any consolidated proceedings whenever necessary to avoid unnecessary costs or delay or to effectuate the purposes of the Act.

### **19:18-3.4 Answer**

(a) Within 20 days from the service of the petition, the respondent shall file an answer.

(b) The answer shall specifically admit, deny or explain each of the allegations set forth in the petition, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial.

(c) All allegations in the petition, if no answer is filed, or any allegation not specifically denied or explained, unless the respondent shall state that it is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown.

(d) The answer shall include a specific factual rebuttal to the petition, accompanied by all supporting documents and affidavits.

(e) The answer shall also include a statement of facts constituting any affirmative defense.

(f) The answer shall be in writing and the party or representative filing the answer shall make this dated and signed certification: "I declare that I have read the above statements and that the statements are true to the best of my knowledge and belief."

Amended by R.2005 d.140, effective May 2, 2005

See: 37 N.J.R. 41(a), 37 N.J.R. 1539(a).

Rewrote (f)

### **19:18-3.5 Where to file; number of copies; service**

An original and nine copies of the answer shall be filed with the Commission together with proof of service of a copy of the answer on the petitioner and any intervenor.

### **19:18-3.6 Amendment**

The Chairman of the Commission or such other Commission designee may permit the respondent to amend its answer at any time upon such terms as may be deemed just.

### **19:18-3.7 Reply**

Within five days of receipt of the answer, the petitioner may file an original and nine copies of a reply and any supporting documents and affidavits together with proof of service of a copy of the reply on the respondent and any intervenor. No further replies shall be permitted without permission of the Chairman or such other Commission designee.

### **19:18-3.8 Request for evidentiary hearing**

(a) Any party desiring an evidentiary hearing shall file with the Commission an original and nine copies of a request therefor, together with proof of service of a copy of the request on the other party. The petitioner shall file such a request no later than five days from receipt of the respondent's answer. The respondent shall file such a request no later than five days from the date a reply is due. Failure to file a timely request for an evidentiary hearing shall constitute a waiver of any claim to such hearing. Any such request shall set forth in detail the specific factual issues which the requesting party contends necessitate an evidentiary hearing and shall explain why these issues are substantial and material. Factual allegations not raised shall be deemed to be undisputed for purposes of determining whether there shall be an evidentiary hearing.

(b) Within five days of receipt of a request for a hearing, the other party shall file with the Commission an original and nine copies of a written response, together with proof of service of a copy of the response on the requesting party. The response shall specifically reply to each factual issue alleged to be in dispute by the requesting party and shall also state what, if any, additional factual issues not raised by the requesting party are alleged to be in dispute. Any factual issue not specifically responded to or raised in the response shall be deemed to be undisputed for purposes of determining whether there shall be an evidentiary hearing.

(c) The request for an evidentiary hearing and the response, together with the petition, the answer and any reply, shall constitute the pleadings for the evidentiary hearing.

### **19:18-3.9 Briefs**

(a) In the absence of a hearing, the Chairman or such other Commission designee shall notify each party that it has 14 days from the date of notification to file an original and nine copies of a supporting brief, with proof of service of a copy of such brief on the other party.

(b) Within seven days after receipt of the initial brief, each party may file with the Commission an original and nine copies of a reply brief, together with proof of service of a copy of such brief on the other party. No other briefs shall be served or filed without leave of the Chairman or such other Commission designee.

(c) The Chairman or such other Commission designee, in his or her discretion, may grant written requests for extensions of time within which to file briefs. Such request shall set forth the reasons for the request and the position of the other party regarding the requested extension.

### **19:18-3.10 Evidentiary hearings; motions**

(a) If, following receipt of a timely request for an evidentiary hearing and a response pursuant to N.J.A.C. 19:18-3.8, or after determination without a request, it appears to the Chairman or such other Commission designee that there are substantial and material disputed factual issues, a notice of hearing shall be issued setting forth the time and place for the evidentiary hearing. The Chairman or such other Commission designee shall appoint a hearing examiner to conduct such hearing.

(b) Any motions filed pursuant to this subchapter shall be governed by the provisions of N.J.A.C. 19:14-4.1 through 19:14-4.8 on unfair practice proceedings, insofar as applicable.

(c) Any evidentiary hearing conducted pursuant to this subchapter shall be governed by the provisions of N.J.A.C. 19:14-6.1 through 19:14-6.13 on unfair practice proceedings, insofar as applicable.

(d) After the evidentiary hearing, or upon the parties' consent before the conclusion of the evidentiary hearing, the hearing examiner shall prepare a report and recommended decision which shall contain findings of fact, conclusions of law, and recommendations as to the disposition of the case. The hearing examiner shall file the original with the Commission, and shall serve a copy on the parties. Upon service on the parties, which shall be complete upon mailing, the case shall be deemed transferred to the Commission.

**19:18-3.11 Record before the Commission; exceptions; cross-exceptions**

The record before the Commission after a hearing shall consist of the petition for contested transfer determination, the answer and any replies, the request for evidentiary hearing and any replies, the notice of hearing, any official transcript of the evidentiary hearing, stipulations, exhibits, documentary evidence, and depositions, together with the hearing examiner's report and any exceptions, cross-exceptions, briefs, and answering briefs, which shall be governed by the provisions of N.J.A.C. 19:14-7.3 (Exceptions; cross-exceptions; briefs; answering briefs).

**19:18-3.12 Oral argument**

Proceedings under this chapter shall be submitted for the Commission's consideration without argument unless ordered by the Chairman or such other Commission designee. Requests for oral argument shall be filed by any party along with its initial brief, or where a hearing has been conducted, along with its exceptions or cross-exceptions. Such request shall be made by a separate paper, an original and two copies of which shall be filed with the Commission, together with proof of service of a copy of such request on the other party. The Chairman or such other Commission designee shall notify the parties of the assigned argument date, if permission to argue orally is granted. The Commission may terminate any argument permitted at any time it deems the issues adequately argued.

**19:18-3.13 Final determination; decisions in the absence of exceptions**

Based on the parties' submissions and any oral argument, or where an evidentiary hearing has been conducted, based on the record in the case as set forth in N.J.A.C. 19:18-3.11 and any oral argument, the Commission or its designee shall issue and serve on the parties its findings of fact and conclusions of law, including its determination as to whether the basis of the disputed transfer was predominantly disciplinary, and may take reasonable action to effectuate the purposes of the Act. If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of

the recommended decision that the Commission will consider the matter further.

**19:18-3.14 Motion for reconsideration**

After the decision of the Commission or its designee, a motion for reconsideration may be filed in accordance with the provisions of N.J.A.C. 19:14-8.4 (Motion for reconsideration).

**19:18-3.15 Interim relief**

Upon the filing of a petition, the petitioner may apply to the Commission for an order requesting the respondent to show cause why specified interim relief should not be granted pending the disposition of the proceeding. Such a request shall be governed by the provisions of N.J.A.C. 19:14-9.1 through 9.5 on unfair practice proceedings, insofar as applicable.